

APPEAL NO. 040340
FILED APRIL 9, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 12, 2004. The hearing officer resolved the disputed issue by deciding that although the respondent (claimant) has failed to demonstrate that it is reasonable and necessary for her to travel more than 20 miles, each way, in order to obtain reasonable and necessary medical treatment for her compensable injury of _____, the appellant (carrier) waived its right to dispute her entitlement to such reimbursement for the 50 trips made between December 20, 2002, and August 27, 2003; carrier therefore is liable for mileage for these trips, at the rate of 35 cents per mile. The carrier appeals the determination that it waived the right to dispute entitlement to travel reimbursement, arguing that waiver was not certified as an issue for the CCH and that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6(d) (Rule 134.6(d)) does not provide for waiver. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

It was undisputed that the claimant sustained a compensable injury on _____. Rule 134.6 provides that, when it becomes reasonably necessary for an injured employee to travel in order to obtain appropriate and necessary medical care for the injured employee's compensable injury, the reasonable cost shall be paid by the insurance carrier, and that reimbursement shall be based on guidelines which include that if the mileage shall be greater than 20 miles, one way, the injured employee is entitled to travel reimbursement. The hearing officer found that the distance between the claimant's residence and the office of her treating doctor is 19.39 miles, each way, when measured along the shortest reasonable route. The hearing officer additionally found that it is not reasonable or necessary for the claimant to travel more than 20 miles from her residence in order to obtain reasonable and necessary medical treatment for her compensable injury of _____. We note that these findings were not appealed and have become final pursuant to Section 410.169. However, the hearing officer concluded that the carrier waived its right to dispute the claimant's entitlement to reimbursement for travel expenses for trips made to her treating doctor's office between December 20, 2002, and August 27, 2003.

The carrier argues that the hearing officer erred in finding waiver when waiver was not certified as an issue for the hearing. Section 410.151 pertains to the scope of a CCH and subsection (b) provides that an issue that was not raised at a benefit review conference (BRC) may not be considered unless the parties consent or the Texas Workers' Compensation Commission (Commission) determines that good cause existed for not raising the issue at the BRC. Rule 142.7 provides the procedures for submitting an additional dispute by unanimous consent of the parties and for requesting the

hearing officer to include an additional dispute upon a finding of good cause. The CCH record reflects that an issue regarding whether the carrier timely contested the claimant's entitlement to reimbursement for the requested travel expenses was not an issue at the BRC, was not specifically listed as a disputed issue at the CCH, and no request to add such an issue was made to the hearing officer. However, the Appeals Panel has recognized that an issue may be actually litigated by the parties at the hearing notwithstanding its not being in the statement of disputes contemplated by Rule 142.7 and that is what the record reflects occurred in this case. See Texas Workers' Compensation Commission Appeal No. 94269, decided April 20, 1994; *compare* Texas Workers' Compensation Commission Appeal No. 952144, decided January 22, 1996.

The hearing officer cited Rule 134.6(d) in her Statement of the Evidence, writing that the referenced Rule "clearly states that an insurance carrier which does not give a detailed reason why requested travel reimbursement has been denied will waive the right to dispute the propriety of the requested reimbursement." We disagree. In the Preamble and public comment to Rule 134.6(d) the question was raised regarding any penalty in the event that a carrier does not comply with subsection (d) and the Commission's response was that failure to comply with a Commission rule "is an administrative violation for which the Commission may pursue a number of enforcement actions." See *also* Texas Workers' Compensation Commission Appeal No. 010522-s, decided April 18, 2001.

Accordingly, we reverse the hearing officer's decision that the carrier waived its right to dispute the claimant's entitlement to travel expense reimbursement for trips made to her treating doctor's office between December 20, 2002, and August 27, 2003, and render a new decision that the claimant is not entitled to reimbursement of the claimed travel expenses.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Veronica L. Ruberto
Appeals Judge